

HOUSE BILL No. 1340

DIGEST OF INTRODUCED BILL

Citations Affected: IC 21-5-13.

Synopsis: School capital improvement partnership. Establishes a school capital improvement partnership board in Marion County to construct or improve school buildings and facilities. Authorizes the board to: (1) issue bonds; (2) impose either a sales tax or an income tax; and (3) levy a property tax, if necessary, to pay debt service on bonds.

Effective: July 1, 2004.

Porter

January 15, 2004, read first time and referred to Committee on Education.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1340

A BILL FOR AN ACT to amend the Indiana Code concerning education finance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 21-5-13 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:

4 **Chapter 13. School Capital Improvement Partnership Board**

5 **Sec. 1. This chapter applies to a county having a consolidated**
6 **city.**

7 **Sec. 2. As used in this chapter, "board" refers to the school**
8 **capital improvement partnership board established under this**
9 **chapter.**

10 **Sec. 3. As used in this chapter, "bonds" means bonds issued**
11 **under section 17 of this chapter.**

12 **Sec. 4. As used in this chapter, "governing body" means any**
13 **board of school commissioners, metropolitan board of education,**
14 **board of school trustees, or other board or commission charged by**
15 **law with the responsibility of administering the affairs of a school**
16 **corporation in the county.**

17 **Sec. 5. As used in this chapter, "operating expenses" means:**

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(1) the necessary operational expenses of the board in performing the board's duties under this chapter, including maintenance, repairs, replacements, alterations, and costs of services of architects, engineers, accountants, attorneys, and consultants;

(2) the expenses for any other purpose that has been approved under the board's budget; and

(3) the maintenance of reasonable reserves for any of the items listed in subdivisions (1) and (2) or for other purposes required under a resolution, an ordinance, or a trust agreement.

Sec. 6. As used in this chapter, "principal and interest" or "principal on and interest of" includes, unless the context otherwise requires, payments required by lease agreements.

Sec. 7. As used in this chapter, "school capital improvement" means the construction, renovation, remodeling, or repair of a school building or facility used in connection with the operation of schools, including:

(1) the site for the school building or facility;

(2) the equipment for the school building or facility; and

(3) all appurtenances to the school building or facility, such as heating, ventilation, water supply, sewage disposal, plumbing, drainage, lighting, walks, drives, playgrounds, athletic fields, and other necessary structures and improvements used in connection with the school building or facility.

Sec. 8. As used in this chapter, "school corporation" means any public school corporation in the county. The term includes a school city, school town, school township, consolidated school corporation, metropolitan school district, township school corporation, or community school corporation.

Sec. 9. (a) A school capital improvement partnership board is established in the county.

(b) The board may design, finance, construct, and equip a school capital improvement under this chapter.

Sec. 10. (a) The board is comprised of fifteen (15) members, appointed as follows:

(1) The governing body of each school corporation shall appoint one (1) member.

(2) The mayor of the consolidated city shall appoint two (2) members, who may not be affiliated with the same political party.

(3) The majority leader of the legislative body of the county

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shall appoint two (2) members, who may not be affiliated with the same political party.

(b) Subject to subsection (e), a member is entitled to serve a two (2) year term. A member may be reappointed to subsequent terms.

(c) If a vacancy occurs on the board, the original appointing authority shall fill the vacancy by appointing a new member for the remainder of the vacated term.

(d) A member of the board is not entitled to a salary per diem or reimbursement for traveling expenses or other expenses actually incurred in connection with the member's duties.

(e) A board member may be removed for cause by the appointing authority who appointed the member.

Sec. 11. (a) At the first meeting of the board, and then immediately after September 15 each year thereafter, the board shall hold an organizational meeting. The board shall elect one (1) of the members to serve as president, one (1) member to serve as vice president, one (1) member to serve as secretary, and one (1) member to serve as treasurer. The officers serve from the date of their election until their successors are elected and qualified.

(b) The board may adopt the bylaws and rules that it considers necessary for the proper conduct of its duties and the safeguarding of the funds and property entrusted to its care. Eight (8) members of the board constitute a quorum, and the concurrence of eight (8) members is necessary to authorize any action.

Sec. 12. (a) The treasurer of the board is the official custodian of all funds and assets of the board and is responsible for their safeguarding and accounting. The treasurer of the board shall give a bond for the faithful performance and discharge of all duties required of the treasurer of the board by law in the amount and with surety and any other conditions prescribed and approved by the board. All funds and assets in the school capital improvement bond fund established by this chapter and all other funds, assets, and tax revenues held, collected, or received by the county for the use of the board shall be promptly remitted and paid to the treasurer of the board, who shall issue receipts for them.

(b) The treasurer of the board shall deposit all funds received by the board as required by this chapter and in accordance with IC 5-13. Money so deposited may be invested and reinvested by the treasurer of the board in accordance with IC 5-13 and the other general statutes relating to the investment of public funds and in securities that the board specifically directs. All interest and other income earned on investments becomes a part of the fund from

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1 which the money was invested, except as provided in a resolution,
 2 an ordinance, or a trust agreement providing for the issuance of
 3 bonds or notes. All funds invested in deposit accounts as provided
 4 in IC 5-13-9 must be insured under IC 5-13-12.

5 (c) The board shall appoint a controller to act as the auditor and
 6 assistant treasurer of the board. The controller shall serve as the
 7 official custodian of all books of account and other financial
 8 records of the board and has the same powers and duties as the
 9 treasurer of the board or the lesser powers and duties that the
 10 board prescribes. The controller and any other employee or
 11 member of the board authorized to receive, collect, or expend
 12 money shall give a bond for the faithful performance and discharge
 13 of all duties required of that employee or member in the amount
 14 and with surety and any other conditions prescribed and approved
 15 by the board. The controller shall keep an accurate account of all
 16 money due the board and of all money received, invested, and
 17 disbursed in accordance with generally recognized governmental
 18 accounting principles and procedures. All accounting forms and
 19 records shall be prescribed or approved by the state board of
 20 accounts.

21 (d) The controller shall issue all warrants for the payment of
 22 money from the funds of the board in accordance with procedures
 23 prescribed by the board. However, a warrant may not be issued for
 24 the payment of a claim until an itemized and verified statement of
 25 the claim has been filed with the controller, who may require
 26 evidence that all amounts claimed are justly due. All warrants
 27 must be countersigned by the treasurer or president of the board.
 28 Warrants may be executed with facsimile signatures.

29 (e) If bonds or notes issued under this chapter are outstanding,
 30 the controller shall, within a reasonable period before the date that
 31 any principal or interest becomes due, deposit with the paying
 32 agent or other paying officer sufficient money for the payment of
 33 the principal and interest on the due dates. The controller shall
 34 make the deposit with money from the sources provided in this
 35 chapter and shall make the deposit in an amount that, together
 36 with other money available for the payment of the principal and
 37 interest, is sufficient to make the payment. In addition, the
 38 controller shall make other deposits for the bonds and notes as
 39 required by this chapter or by the resolutions, ordinances, or trust
 40 agreements under which the bonds or notes are issued.

41 (f) The controller shall submit to the board at least annually a
 42 report of the board's accounts exhibiting:

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- (1) the board's revenues, receipts, and disbursements;
- (2) the sources from which the revenues and receipts were derived; and
- (3) the purpose and manner in which the revenues and receipts were disbursed.

The board may require that the report be prepared by an independent certified public accountant designated by the board. The handling and expenditure of funds is subject to audit and supervision by the state board of accounts.

Sec. 13. The board may, acting under the title "The school capital improvement partnership board of _____ County", do the following:

- (1) Design, construct, reconstruct, repair, remodel, enlarge, extend, or add to any school capital improvement presented to the board by a governing body under this chapter.
- (2) Receive excise taxes, income taxes, sales taxes, and ad valorem property taxes and expend that money for:
 - (A) operating expenses;
 - (B) payments of principal or interest of bonds or notes issued under this chapter; and
 - (C) all or part of the cost of a school capital improvement.
- (3) Accept:
 - (A) gifts or contributions from individuals, corporations, limited liability companies, partnerships, associations, trusts, political subdivisions, or foundations; and
 - (B) funds, loans, or advances on the terms that the board considers necessary or desirable from the United States, the state, and any political subdivision or department of either, including entering into and carrying out contracts and agreements in connection with this clause.
- (4) Retain the services of architects, engineers, accountants, attorneys, and consultants and hire employees on terms and conditions established by the board, so long as any employees or members of the board authorized to receive, collect, and expend money are covered by a fidelity bond, the amount of which shall be fixed by the board. Funds may not be disbursed by an employee or a member of the board without the prior specific approval by the board.
- (5) Make and enter into all contracts and agreements necessary or incidental to the performance of the board's duties and the execution of the board's powers under this chapter, including the enforcement of the contracts and

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agreements.

(6) Sue and be sued in the name and style of "The school capital improvement partnership board of _____ County", service of process being had by leaving a copy at the board's office.

(7) Prepare and publish materials and literature relating to any school capital improvement and do all other acts that the board considers necessary to promote and publicize the school capital improvement. The board may assist, cooperate with, and fund governmental, public, and private agencies and groups for these purposes.

(8) Enter into leases of school capital improvements.

(9) Exercise any other power granted to a school corporation in the county in conjunction with the design, financing, construction, repair, remodeling, renovation, or enlargement of a school capital improvement.

Sec. 14. The board may defend any current or former member of the board or its officers, employees, or agents in a claim or suit, at law or in equity, that arises from the exercise of powers or the performance of duties or services for the board or that arises from official acts as a member of the board. The board may indemnify a person for any liability, cost, or damages related to a claim or suit, including the payment of legal fees. Before taking action authorized by this section, the board must, by resolution, determine that the action or conduct in question was taken, done, or omitted in good faith.

Sec. 15. The purchase or lease of material and work on a school capital improvement shall be done by the board under the statutes governing these activities by school corporations, including the public bidding statutes. In an emergency determined and declared by the board and entered into its records, the board may make emergency alterations, repairs, or replacements and contract for the emergency alterations, repairs, or replacements without advertising for bids.

Sec. 16. (a) This section applies to any school capital improvement in the county that is estimated to cost more than one million dollars (\$1,000,000).

(b) A governing body that identifies a need for a school capital improvement shall present the following information to the board:

(1) An analysis of the needs to be met by the proposed school capital improvement.

(2) A detailed description of the proposed school capital

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improvement.

(3) The governing body's formal recommendation to undertake the proposed school capital improvement.

(4) A statement of the projected construction and design costs for the proposed school capital improvement.

(c) The board may adopt a standard format for receiving the information described in subsection (b).

Sec. 17. (a) A school capital improvement may be financed in whole or in part by the issuance of bonds payable solely from one (1) or more of the following sources:

(1) Money in the school capital improvement bond fund available for that purpose.

(2) Any other funds made available for that purpose.

(b) If the board desires to finance a school capital improvement in whole or in part as provided in this section, the board shall adopt a resolution authorizing the issuance of the bonds. The resolution must state:

(1) the date or dates on which the principal of the bonds will mature (not exceeding forty (40) years from the date of issuance);

(2) the maximum interest rate to be paid; and

(3) the other terms on which the bonds will be issued.

(c) An action to contest the validity of bonds to be issued under this section may not be brought after the fifteenth day following:

(1) the receipt of bids for the bonds, if the bonds are sold at public sale; or

(2) the publication one (1) time in a newspaper of general circulation published in the county of notice of the execution and delivery of the contract of sale for the bonds;

whichever occurs first.

(d) Bonds issued under this section may be sold at public or private sale for the price or prices provided in the resolution authorizing the issuance of the bonds. All bonds and interest are exempt from taxation in Indiana as provided in IC 6-8-5.

(e) Any pledge or assignment made by the board under this section is valid and binding from the time that the pledge or assignment is made, and the amounts pledged and received by the board are immediately subject to the lien of the pledge or assignment without physical delivery of those amounts or further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether these parties

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1 have notice of the lien. Neither the resolution nor any trust
 2 agreement by which a pledge is created or an assignment need be
 3 filed or recorded in order to perfect the resulting lien against third
 4 parties. However, a copy of the pledge or assignment shall be filed
 5 in the records of the board.

6 (f) Any trust agreement or resolution providing for the issuance
 7 of bonds may contain provisions for protecting and enforcing the
 8 rights and remedies of the bondholders that are reasonable and
 9 proper and not in violation of law. The provisions may include
 10 covenants stating the duties of the board in relation to:

- 11 (1) the acquisition of property;
- 12 (2) the construction, improvement, maintenance, repair,
- 13 operation, and insurance of the school capital improvement or
- 14 improvements in connection with which the bonds have been
- 15 authorized;
- 16 (3) the custody, safeguarding, investment, and application of
- 17 all money received or to be received by the board or trustee;
- 18 (4) the establishment of funds, reserves, and accounts; and
- 19 (5) the employment of consulting engineers in connection with
- 20 the construction or operation of the school capital
- 21 improvement or improvements.

22 (g) It is lawful for a bank or trust company incorporated under
 23 statute, and a national banking association that may act as
 24 depository of the proceeds of bonds or other funds of the board, to
 25 furnish indemnifying bonds or to pledge securities that are
 26 required by the board.

27 (h) A trust agreement entered into under this section may:

- 28 (1) state the rights and remedies of the bondholders and of the
- 29 trustee;
- 30 (2) restrict the individual rights of action by bondholders as
- 31 is customary in trust agreements or trust indentures securing
- 32 bonds or debentures of private corporations; and
- 33 (3) contain other provisions that the board considers
- 34 reasonable and proper for the security of the bondholders.

35 (i) All expenses incurred in carrying out a trust agreement
 36 entered into under this section may be treated as part of the
 37 necessary operating expenses of the board.

38 (j) Bonds issued under this chapter are not subject to the
 39 petition and remonstrance process in IC 6-1.1-20-3.1 and
 40 IC 6-1.1-20-3.2.

41 Sec. 18. All money received from bonds issued under this
 42 chapter shall be applied solely to the payment of the costs of

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constructing a school capital improvement or refunding or refinancing outstanding bonds or notes, including:

- (1) planning and development of the school capital improvement and all buildings, facilities, structures, and improvements related to that improvement;
- (2) acquisition, clearing, and preparation of a site for construction;
- (3) equipment, facilities, structures, and improvements that are necessary or desirable to make the school capital improvement suitable for use and operation;
- (4) architectural, engineering, consultant, and attorney's fees;
- (5) incidental expenses in connection with the issuance and sale of bonds;
- (6) reserves for principal and interest and for operations, extensions, replacements, renovations, and improvements;
- (7) interest during construction;
- (8) financial advisory fees;
- (9) insurance during construction;
- (10) municipal bond insurance; and
- (11) in the case of a refunding or refinancing, payment of the principal of, redemption premiums, if any, for, and interest on the bonds or notes being refunded or refinanced.

Sec. 19. (a) The board may levy and collect the taxes described in this section.

(b) The board may adopt a resolution to impose a school capital alternative tax in one (1) of the following forms:

(1) An income tax imposed at a rate of one-half of one percent (0.5%) on the adjusted gross income of county taxpayers in the county. Except as otherwise provided by this chapter, an income tax imposed under this subdivision shall be:

(A) imposed, paid, and collected in the same manner as a county option income tax imposed under IC 6-3.5-6; and

(B) distributed to the board in the manner provided by section 25 of this chapter.

(2) A sales tax imposed at a rate of one percent (1%) on the gross retail income received by a retail merchant in a retail unitary transaction. Except as otherwise provided by this chapter, a sales tax imposed under this subdivision shall be:

(A) imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5; and

(B) distributed to the board in the manner provided by

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1 section 25 of this chapter.
 2 The school capital alternative tax takes effect January 1 of the year
 3 following the date on which the resolution is adopted.

4 (c) The school capital alternative tax imposed by the board
 5 under this section remains in effect until rescinded. The board may
 6 not rescind the school capital alternative tax if the board has
 7 pledged the school capital alternative tax for a purpose permitted
 8 by this chapter.

9 (d) Except as provided by section 20 of this chapter, all revenues
 10 received by the board under this chapter, including the proceeds
 11 of the school capital alternative tax, shall be deposited in a separate
 12 and distinct fund called the "school capital improvement fund."
 13 The board may use money in the school capital improvement fund
 14 to pay the board's operating expenses. Any money remaining in the
 15 fund after payment of the board's operating expenses shall, subject
 16 to section 20 of this chapter, be distributed to school corporations
 17 in the county in the manner provided by law.

18 Sec. 20. (a) If the terms under which any outstanding bonds or
 19 notes were issued under this chapter provide that the bonds or
 20 notes are to be secured in whole or in part by money deposited in
 21 a school capital improvement bond fund, the treasurer of the board
 22 shall, except as otherwise provided in this section, establish a
 23 separate and distinct fund called the "school capital improvement
 24 bond fund" and deposit the following amounts in that fund:

- 25 (1) School capital alternative tax proceeds received by the
- 26 treasurer.
- 27 (2) Ad valorem property tax proceeds received by the
- 28 treasurer.
- 29 (3) Net income transferred to the school capital improvement
- 30 bond fund.
- 31 (4) Any other amounts received for deposit in the school
- 32 capital improvement bond fund.

33 (b) Unless otherwise provided in any resolution, ordinance, or
 34 trust agreement under which bonds or notes are issued, amounts
 35 in the school capital improvement bond fund in excess of the
 36 amount required by this section to be on deposit in that fund shall
 37 be transferred to the school capital improvement fund.

38 (c) For purposes of this section, bonds issued under section 17
 39 of this chapter shall be considered to be secured by money
 40 deposited in the school capital improvement bond fund if provided
 41 in the resolution, ordinance, or trust agreement providing for the
 42 issuance of the bonds.

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1 Sec. 21. (a) If the school capital improvement bond fund has
2 insufficient revenues to pay all debt service obligations for any
3 calendar year, the board shall establish a tax levy sufficient to pay
4 the debt service obligations not covered by the school capital
5 improvement bond fund. The tax levy shall be imposed on property
6 taxpayers in the county.

7 Sec. 22. All property owned or used and all income and revenues
8 received by the board are exempt from special assessments and
9 taxation in Indiana for all purposes.

10 Sec. 23. The board and the state, any department, agency, or
11 commission of the state, any department, agency, or commission of
12 municipal or county government, or any school corporation may
13 enter into agreements, contracts, or leases with each other on the
14 terms that are agreed upon, providing for joint and cooperative
15 planning, financing, construction, operation, or maintenance of a
16 school capital improvement or of the buildings, facilities,
17 structures, or improvements that are necessary or desirable in
18 connection with the use and operation of a school capital
19 improvement.

20 Sec. 24. (a) In anticipation of funds to be received from any
21 source, the board may borrow money and issue notes for a term
22 not exceeding ten (10) years and at a rate or rates of interest
23 determined by the board. The notes shall be issued in the name of
24 the "school capital improvement partnership board of _____
25 County" and may be secured (either on a parity with or junior and
26 subordinate to any outstanding bonds or notes) by:

27 (1) the proceeds of school capital alternative tax; or

28 (2) any other funds anticipated to be received.

29 The notes are payable solely from the school capital alternative
30 taxes and anticipated funds.

31 (b) The issuance of notes under this section may be negotiated
32 directly by the board with any bank, insurance company, savings
33 association, or other financial institution licensed to do business in
34 Indiana upon the terms and conditions that are agreed upon,
35 except as specifically provided in this section, and may be
36 consummated without public offering. The notes and the interest
37 on the notes are exempt from taxation in Indiana as provided for
38 bonds in IC 6-8-5.

39 Sec. 25. (a) If the board adopts a resolution to impose or rescind
40 the school capital alternative tax under this chapter, the board
41 shall immediately send a certified copy of the ordinance to the
42 department of state revenue.

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1 (b) A special account within the state general fund shall be
 2 established for each county adopting the school capital alternative
 3 tax. Revenue collected under this chapter within a county shall be
 4 deposited in that county's account in the state general fund. Income
 5 earned on money held in an account becomes a part of that
 6 account. Revenue remaining in an account at the end of a fiscal
 7 year does not revert to the state general fund.

8 (c) Revenue derived from the imposition of the school capital
 9 alternative tax shall, in the manner prescribed by this section, be
 10 distributed to the county that imposed the tax. The amount to be
 11 distributed to a county during a calendar year equals the amount
 12 of school capital alternative tax revenue that the department of
 13 state revenue, after reviewing the recommendation of the budget
 14 agency, estimates will be received from that county during the
 15 twelve (12) month period beginning July 1 of the immediately
 16 preceding year and ending June 30 of the following year.

17 (d) Before July 2 of each year, the department of state revenue,
 18 after reviewing the recommendation of the budget agency, shall
 19 estimate and certify to the treasurer of the board in each adopting
 20 county the amount of school capital alternative tax revenue that
 21 will be collected from that county during the twelve (12) month
 22 period beginning July 1 of that year and ending June 30 of the
 23 immediately following year. The amount certified is the county's
 24 certified distribution for the immediately following year. The
 25 amount certified may be adjusted under subsection (e) or (f).

26 (e) The department of state revenue may certify to an adopting
 27 county an amount that is more than the estimated twelve (12)
 28 month revenue collection if the department, after reviewing the
 29 recommendation of the budget agency, determines that there will
 30 be more revenue available for distribution from the county's
 31 account established under subsection (b).

32 (f) The department of state revenue may certify an amount less
 33 than the estimated twelve (12) month revenue collection if the
 34 department, after reviewing the recommendation of the budget
 35 agency, determines that a part of those collections must be
 36 distributed during the current year to enable the county to receive
 37 its full certified distribution for the current year.

38 (g) One-half (1/2) of each county's certified distribution for a
 39 year shall be distributed from the county's account established
 40 under subsection (b) to the treasurer of the board on May 1 and
 41 the other one-half (1/2) on November 1 of that year.

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1 (h) All distributions from an account established under
2 subsection (b) must be made by warrants issued by the auditor of
3 state to the treasurer of state ordering the appropriate payments.

4 SECTION 2. [EFFECTIVE JULY 1, 2004] (a) The initial
5 appointments to the school capital improvement partnership board
6 under IC 21-5-13-10, as added by this act, shall be made not later
7 than August 15, 2004

8 (b) The mayor of a consolidated city who appoints members to
9 the school capital improvement partnership board under
10 IC 21-5-13-10, as added by this act, shall designate one (1) of those
11 members to convene the initial meeting of the board, which must
12 be held not later than September 15, 2004.

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